

**Dun & Bradstreet (Singapore) Pte. Ltd. & Anor. v.
Dun & Bradstreet (Malaysia) Sdn. Bhd.**

[1994] 1 CLJ

Haji Abdul Malek bin Haji Ahmad J.

369

of causing wrongful gain to one person, or wrongful loss to another person. The evidence of Liew Shen demanding a SESCO receipt for the payment clearly indicates that the payment was to SESCO. Liew Shen called the SESCO office at Serian for the repair and, as a result, the repair work was done by the accused with the personnel and facilities of the SESCO. In his cautioned statement Exh. D1, the accused denied demanding payment for the repair. He had also failed to make over the payment or account for it to SESCO. The evidence in its totality justifies the conclusion that the accused had acted dishonestly.

On the evidence the LSCJ was, in my opinion, amply justified in finding that the money was held by the accused or entrusted to him for the benefit of SESCO.

The LSCJ was justified in coming to the conclusion as he did and rightly convicted the accused.

Neither in law, nor on the facts has any sufficient reason been shown for interfering with the decision of the LSCJ and for quashing the conviction. The appeal against the conviction, therefore, is dismissed.

As the 6-month imprisonment sentence, of which there is no appeal and respecting which I consider fair and reasonable, was stayed pending appeal, and since the appeal fails, the accused is to serve the sentence forthwith.

a

**DUN & BRADSTREET
(SINGAPORE) PTE. LTD. & ANOR.**

v.

**DUN & BRADSTREET
(MALAYSIA) SDN. BHD.**

b

HIGH COURT, KUALA LUMPUR
DATO' HAJI ABDUL MALEK BIN HAJI
AHMAD J.
[CIVIL SUIT NO. D5-22-345-93]
27 SEPTEMBER 1993

c

TRADE MARKS: Utilising trade name of another - Passing off - Uncommon trade name - Scope of business activity of defendant wide - Plaintiffs not registered in Malaysia but having dealings with local entities - Whether plaintiffs have goodwill and reputation to protect in Malaysia - Whether public would confuse the two businesses as one and the same or an extension thereof.

d

INJUNCTION: Whether there was a serious question to be tried - Passing off - Identical trade name - Intention of plaintiff to expand business locally - Hampered by defendant's use of their trade name - Damage to business reputation - Balance of convenience.

e

The plaintiffs are members of an international group of companies in the business of providing credit information services and business and marketing information services amongst others. The first plaintiff is a Singapore subsidiary of the second. The first plaintiff had penetrated

f

the local market and had contracts with local entities. The plaintiffs aver that plans to incorporate a company here using the second plaintiffs' trade mark (registered locally under 'Dun & Bradstreet', certificate issued on 21 May 1987) had been impeded by their discovery of the defendant's use of their business name since

g

13 March 1992. The plaintiffs claim that their name had become distinctive and known internationally and in Malaysia. They allege that the defendants have acted to "utilise the plaintiffs' reputation and goodwill" and that the appropriation of the identical business name was

h

mala fides. They therefore apply to restrain the defendants from using the said name for their (defendant's) business.

i

The defendants maintain that the plaintiffs had no established presence, goodwill and reputation to protect in Malaysia as they were not locally registered companies and had not contributed to the payment of taxes locally. They

also contend that they (defendants) were in the business of supplying stationery and printing material and their trade with local entities had no link with the plaintiffs nor intruded into the plaintiffs' sphere of business.

Held:

[1] The plaintiffs have an established goodwill and reputation to protect due to their involvement with Malaysian companies since 1989. Reputation plus some market activity in the jurisdiction is sufficient to establish a business goodwill entitled to protection. The name of 'Dun & Bradstreet' in the aforesaid combination is a rarity and the question to be asked is whether the public here, notwithstanding its high literacy level, would be confused by the presence of two companies with the same name, more so with the defendant's business described as that of "general trading" which could well include the plaintiffs' sphere of activity. From the names of the two parties themselves, any third party dealing with them would have thought that the other party was the same company or a branch or an extension of the other.

[2] The non-payment of taxes locally and the alleged non-compliance of registration requirements of a representative office locally cannot be factors to establish presence, reputation and goodwill in the plaintiffs' case as the plaintiffs' business had been transacted through the first plaintiff in Singapore. It is more than likely therefore that these considerations do not arise at all.

[3] There is a serious question to be tried and the balance of convenience is in favour of the injunction being granted with the usual undertaking as to damages.

[Application granted. Stay on the mandatory orders granted pending disposal of appeal to Supreme Court vide Civil Appeal No.02-448-93].

Cases referred to:

Compagnie General Des Eaux v. Compagnie Generale Des Eaux Sdn. Bhd. [1992] 4 CLJ 1979 / [1992] 1 AMR 40 (foli)
Esanda Ltd. v. Esanda Finance Ltd. [1984] 2 NZLR 748 (refd)
Cavendish House (Cheltenham) Limited v. Cavendish-Woodhouse Limited [1970] RPC 234 (refd)
Effluent Disposal limited v. Midlands Effluent Disposal Limited [1970] RPC 238 (refd)

- a *The Athlete's Foot Marketing Associates Inc. v. Cobra Sports Ltd. & Anor.* [1980] RPC (No. 12) 343 (dist)
Television Broadcasts Ltd. v. Home Guide Publication Co. [1982] FSR 505 (refd)
Tan-Ichi Company Ltd. v. Jancar Limited [1990] FSR 151 (refd)
David Hey v. New Kok Ann Realty Sdn. Bhd. [1985] 1 MLJ 167 (cit)
- b *Syawal Enterprises Sdn. Bhd. & Anor. v. Dayadiri Sdn. Bhd.* [1990] 3 MLJ 239 (cit)
American Cyanamid v. Ethicon [1975] AC 396 (cit)
Euro-Diam Ltd. Bathurst [1990] 2 CLJ 297 / [1988] 2 WLR 517 (cit)
- c *For the plaintiffs - Porres Royan; M/s. Shook Lin & Bok*
For the defendant - Logan Sabapathy; M/s. Joseph Yeo & Logan Sabapathy

JUDGMENT

Haji Abdul Malek bin Haji Ahmad J:

- d Most people familiar with English names would agree that "Dun", as opposed to the more familiar "Dunn" or "Dunne", and "Bradstreet" cannot be said to be common names whether individually or together. And taken together, to my mind, they can be said to be a rarity. Accordingly, if someone came up with the trade name of "Dun & Bradstreet", he must surely have a good explanation as to how he got that name combination.
- e

That was the problem faced by the plaintiffs when the defendant set up business using their name on the 13 March 1992. Consequently, they had filed a summons in chambers on the 29 April 1993 asking for the following:

- f
 1. an interlocutory injunction to restrain the defendant whether by itself, its directors, agents, servants or any of them or otherwise howsoever from doing the following acts or any of them, that is to say -
- g
 - (a) using in any way in the course of trade of business or carrying on a business under the style, title and business name which comprises of the name "Dun & Bradstreet" or any name or style which includes the words "Dun & Bradstreet" or any part or parts thereof or any other business name or style which is substantially identical with or deceptively similar to the name "Dun & Bradstreet" or is colourably or confusingly similar thereto;
 - (b) passing off or attempting to pass off and/or enabling or assisting others to pass off the business of the defendant as and for the business of the plaintiffs
- h
- i

**Dun & Bradstreet (Singapore) Pte. Ltd. & Anor. v.
Dun & Bradstreet (Malaysia) Sdn. Bhd.**

[1994] 1 CLJ

Haji Abdul Malek bin Haji Ahmad J.

371

by the use in connection therewith of the name "Dun & Bradstreet" or any name containing the said words or any colourable imitation thereof or so nearly resembles the same as to be calculated to deceive the trade and public and/or to induce the belief that the business carried on by the defendant is the same as the business carried on by the plaintiffs is authorised by the plaintiffs or in any way connected therewith or any other means;

2. that the defendant do within fourteen (14) days of the date of service of this order whether by itself, its directors, agents, servants or any of them or otherwise howsoever, take all steps to withdraw, remove or dislodge from the Register at the Registry of Companies in Malaysia any and all registration, lodgment or any application thereof by the defendant of the name "Dun & Bradstreet" or any other name bearing or resembling the name "Dun & Bradstreet" as the name of the defendant and to do all such acts and execute all such documents as may be necessary or desirable to be done or executed in order to cause the defendant to change its name from "Dun & Bradstreet (Malaysia) Sdn Bhd" to some other name not incorporating the words "Dun & Bradstreet" or any words substantially identical with or deceptively similar to those words or either of them and to have the said change of name registered in the relevant Registry of Companies in Malaysia;
3. alternatively, that the Registrar of Companies be directed to take such steps to have the words "Dun & Bradstreet" removed or deleted from the Register as part of the defendant's name;
4. that the defendant do forthwith destroy or cause to destroy all stationery, printed matters, letterheads, signboards and business cards bearing the words "Dun & Bradstreet" in the possession, control or custody of the defendant, its directors, servants or agents of the said materials or articles;
5. that the costs of and incidental to this application be costs in the cause;
6. such further or other relief as this Honourable Court may deem fit.

In the supporting affidavit deposed by the General Manager of the first plaintiff, he had averred that the plaintiffs are members of an established group of international companies known throughout the world and enjoying a substantial reputation particularly in credit information services. Apart from the plaintiffs, the other members include Dun & Bradstreet

a Corporation and Dun & Bradstreet Information Services.

He had further deposed that the first plaintiff is the Singapore subsidiary of the second plaintiff and the former's business had extended to Malaysia by entering into contracts with local entities which had resulted in their acquiring a substantial reputation and goodwill in this country. Similarly, he stated that as a consequence of the second plaintiff's extensive and established business, the name "Dun & Bradstreet" had become distinctive and has been associated with the second plaintiff's business both internationally and in Malaysia.

c He had also exhibited the second plaintiff's trade mark registration namely No. M/90239 for "Dun & Bradstreet" in Malaysia where the certificate had been issued on 21 May 1987 after being applied for on 13 April 1981.

d It has been further averred in the affidavit that by virtue of the first plaintiff's business interests in Malaysia and the favourable prospects in this country, the plaintiffs had decided to expand their business in Malaysia by using the second plaintiff's trade mark for a company which they had proposed to incorporate here as their subsidiary but had discovered that they could not do so as the same name had already been taken up by the defendant on 13 March 1992.

e For effect, it is also appropriate to reproduce paragraphs 11 to 22 of the same affidavit which reads:

f 11. I verily believe that the defendant has not carried on and is not carrying on any form of business activity save as herein deposed. Further, to the best of my knowledge, the defendant is a "shelf company" with a paid-up capital of Ringgit Two (RM 2) only.

g 12. The nature of the business of the defendant has been described as "General Trading".

h 13. The defendant and/or its agents or servants have without the authority or consent whatsoever given by the plaintiffs caused the defendant to be incorporated as aforesaid. The defendant has deliberately chosen the plaintiffs corporate names. It is obvious that such acts of the defendant are and have been conceived to utilise the plaintiffs reputation and goodwill. I aver that the defendant's choice of business name is made *mala fide* and for no other

i

reason than to misappropriate the reputation and goodwill of the plaintiffs.

14. I verily believe that the defendant and/or its agents or servants were at the time of incorporating the defendant well aware of the reputation and goodwill of the plaintiffs in this country and internationally. I have also been informed by Mr. John Lawler, a director of Dun & Bradstreet Information Services, another member of the group, that his investigation at the Registry of Companies revealed that the defendant had been registered by a company named Business & Search Information Services Sdn Bhd (hereinafter referred to as "BASIS"), a former correspondent of the plaintiffs in Malaysia. The managing director of BASIS, Mr. Steven How, has upon being questioned by me, acknowledged the complicity of the directors of BASIS in the registration of the defendant and stated that their purpose was to sell the business for Ringgit Three Thousand (RM 3,000).

15. Further, I aver that the acts of the defendant are calculated to confuse and deceive prospective clients of the plaintiffs that the defendant is connected or associated with the plaintiffs when in actual fact there is no such connection or association whatsoever.

16. The plaintiffs are also extremely concerned that the trade and public would be misled into believing that any services or goods offered by the defendant have been endorsed or approved by the plaintiffs and thereby resulting in damage to the reputation and goodwill of the plaintiffs. At all material times and throughout their histories, the plaintiffs have ensured that services or goods provided by them are of a high quality which explains the success of the plaintiff's businesses.

17. The plaintiffs have upon discovery of the use by the defendant of the name "Dun & Bradstreet", instructed their solicitors, Messrs Shook Lin & Bok to issue a cease and desist letter to the defendant on 25 March 1992 and 20 June 1992. Now produced and shown to me marked "EF-3" and "EF-4" are copies of the said letters dated 25 March 1992 and 20 June 1992 respectively.

18. The plaintiff's solicitors were unable to obtain particulars of the defendant from the Registry of Companies at the time the first cease and desist letter was sent out. At that time the defendant had yet to be listed on the index book at the Registry of Companies and thus no search could be made. Hence, the plaintiff's solicitors attempted to send the first cease and desist

a letter dated 25 March 1992 to the defendant care of BASIS, which they had reason to believe was the company that incorporated the defendant. In a letter dated 27 March 1992, BASIS refused acceptance of the cease and desist letter and returned it to the plaintiff's solicitors. Now produced and shown to me marked "EF-S" is a copy of the said letter dated 27 March 1992.

b

c 19. An official search from the Registry of Companies containing, company information on the defendant was only received by the plaintiff's solicitors on 19 June 1992. A second cease and desist letter dated 20 June 1992 was then promptly sent to the defendant's registered address. A reply dated 6 July 1992 was received by the plaintiff's solicitors from the defendant's solicitors, a copy of which is now produced and shown to me marked "EF-6".

d 20. That acts complained of above against the defendant are dishonest devices calculated and intended by the defendant to misappropriate the proprietary rights of the plaintiffs and to take advantage of the plaintiff's reputation and goodwill and for no other reason.

e 21. Further, it is inevitable that serious loss and irreparable damage will be suffered by the plaintiffs as a result of the defendant's unlawful use of the plaintiff's corporate name.

f 22. The plaintiffs hereby agree to any order which this Honourable Court may make as to damages in case this Court shall hereafter be of the opinion that the defendant has wrongfully sustained damages by reason of the granting of the injunction as prayed.

g In another affidavit filed on the 30 June 1993, the Country Manager of Dun & Bradstreet Information Services (M) Sdn. Bhd. set up in July 1992 had stated that it is a member of the Dun & Bradstreet International group of companies established in 1857 with two million customers worldwide and which is a world leader in providing business and marketing information, business education seminars and receivable-management services in more than thirty countries worldwide including Malaysia with a turnover in excess of 5 billion US dollars in 1991.

h

i He had further averred that prior to its incorporation, the first plaintiff had extended its business to Malaysia in 1989 and had on the 1 December 1990 placed an advertisement in

the New Straits Times in Malaysia recruiting candidates for the position of Sales Executive whose responsibilities include managing and coordinating the sales of the first plaintiff's business in this country. He had also exhibited no less than thirty one subscription agreements entered into between the first plaintiff and various local entities between January 1989 to March 1992 the month when the defendant first got itself registered.

In their affidavit in reply filed on the 1 July 1993, one of the directors of the defendant had asked for details of the plaintiff's business activities in Malaysia namely the contracts in question, the Malaysian taxes paid for the alleged business transacted in this country and the Government approvals, if any, obtained from the Malaysian authorities to underwrite such business. The defendant also maintained that they are carrying on and continuing in the business of stationery and printing material supply to, and trading with, local entities all of whom have no connection with the plaintiffs or any contact with the plaintiff's sphere of alleged business. As a matter of record, they had denied all the other allegations of the plaintiffs.

Learned Counsel for the defendant had argued that they were taking issue on the passing off action and that the trade mark had no application as it is the name and not the method or mark which is in question. The important thing to consider, he added, was whether the plaintiffs had goodwill and reputation which the Court ought to recognise. As the plaintiffs were not registered companies in this country and since there were no payment of taxes here and that the plaintiffs have not obtained any permission, approval or exemption to undertake business in Malaysia, learned Counsel had submitted that the plaintiffs had not established any presence, goodwill or reputation here. He concluded by saying that the matter only warranted an early trial and not one which should be subject to interim mandatory orders which could provide an irreversible effect.

I had occasion to deal with practically identical facts in *Compagnie Generale Des Eaux v. Compagnie Generale Des Eaux Sdn. Bhd.* [1992] 1 AMR 40 and had granted the plaintiff there the injunction asked for. In that case, too, the defendant did not actually have an office in Malaysia and had not fulfilled the requirements

a stipulated in the registration requirements of a representative office but that did not prevent them, in my view, from carrying on business here though its joint venture company in this country as it had done for the preceding five years. On those facts, together with a detailed deliberation of related authorities namely *b* *Esanda Ltd. v. Esanda Finance Ltd.* [1984] 2 NZLR 748, *Cavendish House (Cheltenham) Limited v. Cavendish-Woodhouse Limited* [1970] RPC 234, and *Effluent Disposal Limited v. Midlands Effluent Disposal Limited* [1970] RPC 238, my finding was that reputation plus some market activity in the jurisdiction was sufficient to establish a business goodwill entitled to protection which also applies to the facts of this case.

Learned Counsel for the defendant had relied heavily on *The Athlete's Foot Marketing Associates Inc. v. Cobra Sports Ltd. & Anor.* [1980] RPC (No. 12) 343 to support his contention that there cannot be any goodwill or reputation lost by the plaintiffs without any presence in Malaysia. In that case, it was held that "although the final decision between the two schools of thought as to what connection with this country is required before a plaintiff can successfully maintain an action for passing off is a difficult matter requiring mature consideration and detailed argument, and was not best dealt with on motion, the decided cases all fell within a narrow compass and in general supported the view that no trader can complain of passing off as against him in any territory in which he has no customers, or nobody who is in a trade relation with him".

However, the facts are distinguishable here as the plaintiff had entered into subscription agreements with no less than thirty Malaysian companies here since January 1989 up to the time the defendant started using the same business name and although the defendant's business is described as "general trading" it could well cover the plaintiff's activity in providing business and marketing information, business education seminars and receivable-management services. The scope of business activity is of course secondary to the question of actual or implied presence in determining goodwill and reputation which I hold, from its involvement with Malaysian companies since 1989, the plaintiffs have. This clearly shows that the plaintiffs have an interest to protect and the test is whether the public here, despite its fairly

high literacy level, would be confused by the presence of two companies with the same name, and not a common name at that, more so with the defendant indulging in general trading which could include the plaintiff's business activity. The important thing to remember was that from the names of the two parties themselves, as in this case, any third party dealing with either of them would have thought that the other party was the same company or a branch or extension thereof. The nonpayment of taxes locally and the alleged non-compliance as regards permission, approval or exemption requirements cannot be factors to establish presence, goodwill and reputation as the plaintiff's business in Malaysia had been transacted through the first plaintiff in Singapore and it is more than likely that these considerations do not arise at all.

On the question of presence, goodwill and reputation, it is relevant to refer to two Hong Kong High Court cases. One is *Television Broadcasts Ltd. v. Home Guide Publication Co.* [1982] FSR 505 where the facts were that the plaintiff who operated a television station, had been broadcasting for some months on its Chinese language channel a popular woman's magazine-type programme called "New Looks of Women", a rough translation of the Chinese characters. The defendant, who published a low-circulation family magazine called "Home Guide" announced in their March 1982 issue that they were changing the name of the magazine to the same characters as used on the plaintiff's programme. Relevant factors to consider were that the subject-matter of the programme and the magazine were similar, the plaintiff had contemplated publishing a magazine in association with the programme and already did so in connection with another programme and both parties intended to form clubs under the name. In support of their claim for passing off, the plaintiff contended that the known practice of television companies producing magazines in conjunction with programmes would lead to the belief among the viewing public and potential viewers that the two were associated. There was a strong likelihood that the high reputation of the programme would suffer, since it had no control over the editorial policy, content, features, etc., of the defendant's magazine. The defendant contended that the new title of their magazine was merely descriptive of the contents and that there was little likelihood of

a confusion; it said that its readership was not precisely the same as the plaintiff's viewing public, the defendant's name appeared at the bottom of the front cover and the Chinese characters in issue were printed differently. It further submitted that the parties were not involved in a common field of activity. It was held in granting interlocutory relief that:

- b**
- (1) the defendant's intention was to deceive the public into thinking that the programme and magazine were linked. (*Slazenger v. Feltham* [1889] 6 RPC 531 referred to);
 - c** (2) there was a sufficient association between the parties fields of activity to lead to confusion among the public. (*Fletcher Challenge Ltd. v. Fletcher Challenge Pty. Ltd.* [1982] FSR 1 approved and applied);
 - (3) the loss to the plaintiff would be likely to be unquantifiable in terms of damage to its reputation and loss of potential readers and members for its magazine and club respectively. (*Henderson v. Radio Corporation Pty. Ltd.* [1969] RPC 218 approved);
 - d** (4) there was no evidence to show that the defendant would be able to pay the plaintiff's damages if an injunction were not granted and the latter were to win at trial; and
 - e** (5) the preservation of the *status quo* also favoured granting the relief.

In *Tan-Ichi Company Ltd. v. Jancar Limited* [1990] FSR 151, the plaintiffs were owners of a chain of Japanese restaurants in Japan called "Ten-Ichi" or "Tempura Ten-Ichi" written in a certain style in characters. The defendants opened a Japanese restaurant in Hong Kong called "Ten-Ichi" written in identical style of ideograms as that of the plaintiffs. The defendants admitted obtaining placemats bearing the plaintiff's name and characters from one of the restaurants in Japan and that they had deliberately chosen to copy the name and the characters. The plaintiff's brought proceedings in passing off. The defendants *inter alia* contended that although the plaintiffs had a reputation in Hong Kong, they had no goodwill which could be damaged and hence had suffered no actionable damage. Further, even if damage had been caused it had occurred outside the jurisdiction and was therefore not recoverable. In granting interlocutory relief, it was held that:

- f**
- (1) the plaintiffs had established that they possessed both reputation and goodwill which could be protected in Hong Kong. By the
 - g**
 - h**
 - i**

defendant's conduct they had lost the opportunity to control and develop the impact of that local reputation and would thus lose customers;

- (2) there were Japanese people in Hong Kong, both tourists and residents. The plaintiffs had established that damage to their goodwill might occur both in Hong Kong and later in Japan. Such damage was recoverable by an action in passing off in Hong Kong. (*Star Industrial Company Limited v. Yap Kwee Kor* [1976] FSR. 256, explained);
- (3) the balance of convenience favoured the grant of interlocutory relief.
(Observed: "This is an evolving field of law ... a Court must respond to the changes which have occurred in international communications. The large number of tourists crossing and recrossing boundaries; the speed and efficiency of modern technology which cause business reputation to be more widely spread and recognised than in the past. Courts in other jurisdictions have responded to the change ...).

The facts are so much stronger here as apart from the closer proximity between Singapore and Malaysia compared to Japan and Hong Kong, the first plaintiff in Singapore had in fact been dealing with about thirty companies in Malaysia for more than three years.

To my mind, there was a serious question to be tried and the balance of convenience was in favour of the injunction being granted as applied for by the plaintiffs. I had accordingly granted the order in terms of the application but although I had omitted to state so, it is with the usual undertaking for damages which although is not contained in the order is implied especially so when the plaintiffs had already agreed to it in their supporting affidavit. By consent of both parties on 22 September 1993, stay had been granted on the mandatory orders pending the disposal of the appeal to the Supreme Court.

a FIRST CONSOLIDATED SDN. BHD.

v.

PADU EHSAN SDN. BHD.

HIGH COURT, MELAKA
TUAN HAIDAR BIN MOHD. NOOR J.

b [CIVIL SUIT NO. 22-113-1992]
23 JUNE 1993

c *CONTRACT: Payments made by plaintiffs to person purportedly acting on behalf of defendant, to secure subcontracts - Documents executed - Subcontracts awarded to third party - Whether main contractor (defendant) liable for plaintiffs' loss of profits due to the alleged breach.*

d *COMPANY LAW: Director's authority and powers - Person holding himself out as Managing Director of defendant - No resolution passed by defendant as to his appointment - Promises given by the so called 'Managing Director' to award subcontracts to plaintiffs in return for payments - No resolution passed to award subcontracts to plaintiffs - Whether the 'Managing Director' had ostensible authority to act on behalf of the defendant.*

e In this claim for breaches of subcontracts, 2 suits are consolidated, the facts being similar and the defendants being the same party. The core issue for determination before the Court was whether there had been a subcontract by the defendant to the two plaintiffs companies with regard to 2 separate development projects.

f The defendant claimed that it had not subcontracted to either of the plaintiffs since no resolution had been passed by the Directors of the defendant that work on the 2 projects be subcontracted to the plaintiffs. The work had in fact been given out to another company on the passing of a resolution. The plaintiffs however argued that through the conduct and actions of one Saadun who claimed to be the Managing Director of the defendant, the defendant had in fact assured the plaintiffs of the subcontracts but had failed to abide by their assurances. The court thus had to determine whether the said Saadun, whom defendant contended was a liaison officer in their company, had ostensible authority to act on behalf of the defendant in relation to the projects and the subcontracting of it.

g Saadun failed to appear to testify at the hearing. However 2 documents executed by Saadun binding the defendant to give the subcontracts to the plaintiffs were produced. Defendant admitted the execution but denies it was done on behalf of defendant.

h

i